

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-SIX**

**HARDEMAN COUNTY DEVELOPMENTAL
SERVICES CENTER, INC.**

Employer

and

Case 26-RC-8381

**UNITED STEELWORKERS OF
AMERICA, AFL-CIO, CLC**

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Hardeman County Developmental Services Center, Inc., provides support services to individuals in Hardeman County, Tennessee who have been diagnosed with mental disabilities or retardation. The Petitioner, United Steelworkers of America, AFL-CIO, CLC, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer's full-time employees, including aides, companions, escort drivers, janitorial, job coaches, maintenance, teacher assistants, and trainers, and including those who work at the Hope Street location, at group homes and at the homes of individual clients. At the hearing, the Petitioner amended the petition to include certain clerical employees in the unit. Following a hearing before a hearing officer of the Board, the Petitioner filed a brief with me.

The issues raised in the hearing and addressed by the parties involve whether 28 individuals in 9 classifications should be included in the unit.¹ The individuals in dispute consist of: 1 residential living coordinator; 5 group home managers; 3 alternate group home managers; 3 supported living coordinators; approximately 11 supported living home managers; 2 lead home companions; 1 benefits clerk; 1 receptionist; and 1 secretary to the director of programming.² Petitioner asserts that all individuals in these classifications should be included in any appropriate unit. The Employer, however, contends that all the coordinators, home managers, alternate home managers, and lead home companions should be excluded as supervisors within the meaning of Section 2(11) of the Act, and that the benefits clerk, receptionist, and secretary to the director of programming should be excluded as office clerical employees³ who do not share a community of interest with the employees in the requested unit.

I have considered the evidence adduced during the hearing and the arguments advanced by the parties. As discussed below, I have concluded that: the residential living

¹ It would appear that the number of employees in the unit who are not in dispute is about 79. In arriving at this number, I take administrative notice that prior to the hearing the Employer submitted an Excelsior list containing the names of 81 full-time employees. This list does not contain the names of 26 of the individuals in dispute, although it does include the names of the 2 lead home companions. I also note that the petition indicates that the unit consists of about 150 employees, a number which would include 25 of the individuals currently in dispute. At the time the petition was filed, the Petitioner was not seeking the three clerical employees.

² The individuals holding those positions at the time of the hearing were: Tasha Pirtle, residential living coordinator; Carol Allen, Josie Brown, Tamra Mooney, Candace Williams, and Angla Woods, group home managers; Toneka Allen, Tiffany Fleet, and Betty McNeal, alternate group home managers; Tawanna Currie, Minerva Halloway, and Arleen Parks, supported living coordinators; Nikie Allen, Mary Brooks, Teakeida Ellison, Naomi Griffin, David Justice, Jacqueline McNeil, Mae Lois Pirtle, Quintasha Polk, Adrian Rivers, Shirley Tennyson, and Ira Todd, supported living home managers; Emma Allen and Caroline Smith, lead home companions; Kendra Ellison, benefits clerk; Grenesha Braddock, receptionist; and Juanita Walker, secretary to director of programming.

³ The Employer also suggested that one or more of these three individuals should be excluded as a confidential employee.

coordinator and supported living coordinators should be excluded from the unit because they are 2(11) supervisors; that the group home managers, alternate group home managers, supported living home managers, and lead home companions should be included in the unit because the record does not establish that they are 2(11) supervisors; that the benefits coordinator should be excluded from the unit because she is a business office clerical who does not share a sufficient community of interest with the unit employees; that the receptionist is not a business office clerical and should be included in the unit; and that the secretary to the director of programming should vote in accordance with the Board's challenged ballot procedure. To provide a context for my decision and discussion of these issues, I will first provide an overview of the Employer's operations and the employee-classification structure. Then, I will discuss the evidence regarding the issues and the reasoning that supports my conclusions.

I. OVERVIEW OF EMPLOYER'S OPERATIONS AND EMPLOYEE-CLASSIFICATION STRUCTURE

As noted above, the Employer provides support services to individuals in Hardeman County, Tennessee who have been diagnosed with mental disabilities or retardation. The Employer's operations are based at its offices at 208 Hope Street in Bolivar, Tennessee. Day-to-day operations are overseen by Executive Director Cynthia Lake. The operations are divided into five different divisions: programming; quality assurance and investigations; administration; early intervention; and health services. Each of these divisions is overseen by a director who reports to the executive director.

Almost all the individuals in dispute are part of the programming division, which is overseen by Director Rick Rouse. The director of programming is assisted by a secretary assigned to provide him support services and directly oversees the workshop

coordinator, weekend supervisor, the adult day services coordinator, the residential living coordinator, and the supported living coordinators.

Direct care services are provided to clients of the Employer in two different settings, either a group home operated by the Employer or a supported living home which is in the client's own residence. The five group homes are overseen by the residential living coordinator. Each group home is staffed by a group home manager and the direct care staff. Three of the five group homes also have an alternate group home manager. Between one and eight clients reside in a group home. The staffing levels for each home are determined by the number of clients residing in the home.

The 19 supported living locations are overseen by three supported living coordinators. Each of these locations is staffed by a home manager or a lead companion and some direct care staff. The staffing levels in the supported living homes are determined based on the amount of services each client receives. The supported living locations have only one to three clients per home.

With regard to the Employer's other divisions, the executive director is assisted by an administrative assistant, who oversees the work of the benefits clerk and the receptionist. The director of early intervention oversees one teacher and one full-time licensed practical nurse. The director of health services oversees the work of one health services coordinator, one health services clerk, one part-time licensed practical nurse, one full-time registered nurse, and the four escort drivers. The director of quality assurance and investigation oversees the human resources director, the investigations coordinator,

the support services director, and the job developer. The support services director oversees the work of the support services coordinator.⁴

The Employer's 208 Hope Street facility contains offices for the directors, support coordinators, and other daytime employees. One wing of that building has a classroom for adult day services and a kitchen, lunchroom, and gym for the clients. Across the parking lot from that building is a workshop area for clients who are working on job skills.

II. FACTS REGARDING DISPUTED EMPLOYEE CLASSIFICATIONS

A. Living Coordinators

1. Residential Living Coordinator

The Employer employs one residential living coordinator ("RLC") whose primary responsibility is to oversee the operations of the Employer's five group homes.

Reporting directly to the RLC on all issues related to the general operation of the group homes are the five group home managers and three alternate home managers. Reporting to those home managers and alternates are about 30 to 35 direct care staff who work in the group homes.

The RLC coordinates maintenance and maintains inspection reports for each of the group homes. The RLC also handles contacts with the Department of Housing and Urban Development and prepares all necessary reports regarding the four group homes overseen by HUD. The RLC generally makes daily visits to each group home to meet

⁴ The parties agreed that Executive Director Cynthia Lake, Director of Quality Enhancement and Investigations Renee Anderson, Director of Health Care Services Ruth Lowe, Director of Early Intervention Services Roxy Whitehorn, Director of Programming Rick Rouse, Administrative Assistant JoAnn Morgan, Adult Day Services Coordinator Lisa Joy, Workshop Coordinator Jean Searles, Director of Human Resources Johnny McKinnie, Inventory Coordinator Shirley Kist,

with the home manager or other employees on issues related to the operation of the home. Some of these visits are unannounced visits to inspect the home to insure that proper living conditions are maintained.

The RLC reviews and approves the time sheets submitted to her by the group home managers. The RLC also reviews and approves all disciplinary reports prepared by the group home managers. The RLC can discipline the home managers and direct care employees. Such discipline could occur, for example, if improper living conditions were discovered during an unannounced visit.

The RLC has also participated in the hiring process for home managers and alternate home managers and can make recommendations regarding the applicants for the position. The RLC performs periodic evaluations of the group home managers and signs off as “reviewer” on evaluations of direct care staff that are prepared by the group home managers. The RLC is a salaried position, but is entitled to overtime when providing direct care services.

2. Supported Living Coordinators

The Employer employs three supported living coordinators (“SLCs”) whose primary responsibilities are to oversee the home managers and direct care staff who work in homes of clients who receive supported living assistance. The supported living home managers report directly to the SLCs regarding issues related to the general operations in each of the supported living homes. Two of the SLCs each have four home managers and a lead companion reporting to them who, in turn, have a total of about 25 direct care staff reporting to them. Thus these two SLCs each have about five people directly

Director of Support Services Trudy Hicks, Job Developer Betty Walker, Health Services Clerk Lois Woods, and an unnamed human services clerk should be excluded from the unit.

reporting to them and about 25 people indirectly reporting to them. The third SLC has three home managers and three direct care staff reporting to directly to her. Those three home managers, in turn, have a total of about 20 direct care staff reporting to them.

The SLCs review and approve the time sheets and discipline submitted to them by the supported living home managers. The SLCs also have the authority to issue oral and written warnings to the supported living home managers and direct care staff and can recommend discipline greater than written warnings be issued.

Like the RLC, the SLCs regularly make announced and unannounced visits to the homes to review the operations in the home and insure that a proper living environment is being maintained. If deficiencies are noted, the SLC can issue discipline if warranted. The Employer's disciplinary procedures provide that employees first receive an oral reprimand, then a written reprimand, and then a suspension. One SLC testified that she had issued oral and written reprimands to employees, but had not suspended an employee. Another SLC explained that she could issue reprimands, but could only recommend a suspension.

Although the SLCs approve leave for the home managers, home managers generally can take off as much as they want provided there is coverage at their home. The home managers generally find their own replacements when they want to be off and simply advise the SLC of the change. The SLCs also determine whether leave taken by direct care staff will be classified as excused or unexcused. The record is unclear as to how the SLC makes the determination about whether leave is excused or unexcused. The SLCs also perform periodic evaluations of the supported living home managers. The SLCs are entitled to overtime when performing direct care services.

B. Home Managers and Companions

1. Group Home Managers

The Employer employs five group home managers, one at each group home operated by the Employer. The group home managers are responsible for the day-to-day operations of their group home, including oversight of the direct care staff who work at the facility.

The group home managers review the time sheets prepared by the direct care staff and transmit the time sheets to the RLC. The group home managers also prepare performance appraisals of the direct care staff and can recommend wage increases for these employees. The record does not reflect whether their recommendations for wage increases have been followed or the circumstances under which employees receive wage increases. Although the group home managers can initiate disciplinary action against direct care staff, these disciplinary actions must be approved by the RLC or a person with a higher level of authority.

The group home managers also make work assignments to staff, but one group home manager described those assignments as automatic and based upon who would have the time available to perform the task. The group home managers serve on a rotating basis as “Supervisor of the Day,” who is responsible for conducting Employer operations at the group homes, within set procedures, outside of the regular business hours of the Employer.

With regard to approval of time off, when a direct care staff member calls in to report an absence, the group home manager either finds a substitute or works the shift

herself. The record does not indicate how the group home manager would find a substitute.

The group home managers are paid at an hourly rate and receive overtime. In addition, the group home managers spend time performing direct care services to the clients residing at the home, but the record is not clear as to the specific amount of time each of the group home managers spends performing direct care services. One of the group home managers testified that she works Saturdays, Sundays, and Mondays and that at the present time she works by herself on each of those days.

2. Alternate Group Home Managers

The duties of the three alternate group home managers are similar to those of the group home managers, with the exception that the alternate only performs these duties on weekends or in the absence of the group home manager from the facility. The alternate home managers are assigned to work as “Supervisor of the Day,” if they are qualified to do so. Like the group home managers, the alternates are hourly paid and receive overtime. In addition, the alternates spend time performing direct care services to the clients, but the record is unclear as to the specific amount of time the alternates spend performing their various duties.

3. Supported Living Home Managers

The Employer employs 11 supported living home managers who are responsible for the day-to-day operations of their assigned client’s home, including oversight of the direct care staff who perform services for the client. Although the supported living home managers assign some work to the direct care staff, as with the group homes, the work assignments appear to be routine. The supported living home managers also prepare

periodic performance appraisals of these direct care staff, but the record does not reflect the impact of these evaluations on the employment of the individual being evaluated.

Regarding disciplinary actions, although the supported living home managers may initiate disciplinary action against direct care staff, these disciplinary actions must be approved by the SLC or a person with a higher level of authority. The supported living home managers are paid at an hourly rate and receive overtime.

The supported living home managers spend about 90 percent of their time providing direct care to a client when no other direct care staff are present.

4. Lead Home Companions

The Employer has two lead home companions. Each of the lead companions has one staff person reporting to her. The only other evidence regarding the job duties and classification of these persons is that one reports to a supported living coordinator and the other reports to a supported living home manager.

C. Office Clerical Employees

1. Benefits Coordinator

The Employer employs one benefits coordinator, also called a benefits clerk, who works in an office at the Employer's 208 Hope Street administrative building. She reports to the administrative assistant and is responsible for maintaining Employer records regarding the current employees and the healthcare benefits received by these employees. When claims related to health insurance benefits are filed, she gathers information and paperwork regarding these claims and provides this information to the insurance agency or adjuster for review. The benefits coordinator also gathers

information regarding property or vehicle damage claims and provides this information to the insurance agent or the executive director of the Employer for review.

Generally, the benefits coordinator has little contact with the living coordinators, home managers, and direct care staff, except when the staff member has questions related to their benefits of a claim or on the rare occasions when this person may be called to perform fill-in direct care duties for the Employer's clients.

2. Receptionist

The Employer employs one receptionist who works at the Employer's administrative building at 208 Hope Street and reports to the administrative assistant. The receptionist's duties are to answer all incoming calls; greet persons entering the administrative building; prepare deposits for the Employer; perform secretarial duties for other people in the department; and open, date stamp, and log all incoming mail to the Employer, including mail for the executive director and other directors.

The receptionist's contact with the home managers, alternates, lead home companions and direct care staff is limited to occasions when those persons have business at the administrative building or, on the rare occasions such as severe weather when the receptionist fills-in for other staff and performs direct care duties for the Employer's clients.

3. Secretary to the Director of Programming

The secretary to the director of programming works in the workshop at 208 Hope Street. Her primary job duties are to handle petty cash and to provide general support and clerical services, such as typing and filing, for the director of programming. On rare occasions, she may be required to perform fill-in direct care services.

III. ANALYSIS OF ISSUES

A. Supervisory Issues

The Employer has objected to the inclusion of the residential living coordinator, supported living coordinators, group home managers, alternate group home managers, supported living home managers, and lead home companions on the basis that the persons in these positions are supervisors pursuant to Section 2(11) of the Act. Section 2(3) of the Act excludes from the definition of the term “employee” any individual employed as a supervisor. Section 2(11) of the Act defines a supervisor as a person who possesses any of the twelve powers listed therein, or the authority to effectively recommend such actions if in doing so the individual exercises independent judgment. The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g., *Vencor Hospital – Los Angeles*, 328 NLRB 1136, 1138 (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997). See also *Holly Farms v. NLRB*, 517 U.S. 392, 399 (1996). To this end, the Board closely examines the record in its determination of supervisory status, and conclusionary statements made by witnesses in their testimony, without supporting evidence, are insufficient to establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

The burden of proving supervisory status rests with the party alleging that an employee is a supervisor. *Arlington Masonry Supply, Inc.*, 339 NLRB No. 99, slip op. at 2 (2003), citing *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711-712 (2001). Whether the Employer met its burden of establishing supervisory status will be discussed separately for each of the classifications.

1. Residential Living Coordinator

The RLC is responsible for oversight of the five group homes operated by the Employer. These duties include the authority to issue disciplinary reprimands and to review and approve disciplinary reprimands submitted by the group home managers. The RLC participates in the hiring process for group home managers and alternate group home managers and makes recommendations regarding the applicants.

Based on this evidence, I conclude that the RLC meets the definition of a statutory supervisor within the meaning of Section 2(11) of the Act. *Heartland of Beckley*, 328 NLRB 1056 (1999); *Venture Industries*, 327 NLRB 918, 919 (1999).

2. Supported Living Coordinators

The SLCs are responsible for oversight of the home managers and direct care staff who work in the home of clients who receive supported living assistance. These duties include the authority to issue disciplinary reprimands and to review and approve disciplinary reprimands submitted by the supported living home managers. Based on this evidence, I conclude that the SLCs meet the definition of a statutory supervisor within the meaning of Section 2(11) of the Act. *Heartland of Beckley*, supra; *Venture Industries*, supra.

3. Group Home Managers

Regarding the group home managers, the Employer presented testimony that these individuals issue disciplinary notices and conduct performance evaluations of the direct care staff at their respective group home. However, while group home managers may prepare a disciplinary report, the decision to issue discipline must be reviewed by the RLC and personnel prior to being placed in the employee's personnel file. Nor does

the evidence establish that the group home managers effectively recommend discipline, as the two instances of discipline offered into evidence were given to the RLC but were never placed in the employee's file. Additionally, while the evidence shows that the group home managers prepare performance evaluations of the direct care staff, these evaluations are reviewed and approved by the RLC and executive director. In addition, there was insufficient evidence presented to establish that the group home manager's recommendations on the evaluations directly affected the employees' terms or tenure of employment. Lastly, the evidence indicates that work assignments in the group homes are generally routine in nature. Thus, I cannot find that the group home managers either responsibly direct the direct care staff or have the power to effectively recommend the actions described in Section 2(11) of the Act. Accordingly, I will include the group home managers in the unit. *Willamette Industries*, 336 NLRB 743 (2001); *Ohio Masonic Home, Inc.*, 295 NLRB 390, 393 (1989); *Sears, Roebuck & Co.*, 292 NLRB 753, 754 (1989); *Tucson Gas & Electric Co.*, 241 NLRB 181 (1979).

4. Alternate Group Home Managers

The duties of the alternate group home managers are the same as those of the group home managers when the alternate is filling in for the group home manager. Since the record does not establish that the alternates' duties and authority are greater than those of the group home managers and in view of my conclusion that there is insufficient evidence to establish that the group home managers are supervisors within the meaning of Section 2(11) of the Act, I find that evidence is insufficient to establish that the alternate group home managers are statutory supervisors. Accordingly, I will include the alternate group home managers in the unit.

5. Supported Living Home Managers

Regarding the supported living home managers, the Employer presented testimony that these individuals can issue disciplinary notices and conduct performance evaluations of the direct care staff at their respective home. However, these disciplinary reports and performance evaluations must be reviewed and approved by an SLC and other Employer officials before they become effective. Thus, as with the group home managers, there is insufficient evidence to show that the supported living home managers effectively recommend discipline or that the performance evaluations have any effect on the terms or tenure of employees. Lastly, the evidence indicates that work assignments in the supported living homes are generally routine in nature. Thus, it cannot be concluded that the supported living home managers either responsibly direct the direct care staff or have the power to effectively recommend the actions described in Section 2(11) of the Act, and I will include the supported living home managers in the unit. *Willamette Industries*, supra; *Ohio Masonic Home, Inc.*, supra; *Sears, Roebuck & Co.*, supra; *Tucson Gas & Electric Co.*, supra.

B. Clerical Employee Issues

The Petitioner has requested the inclusion of three clerical employees, the benefits coordinator, the receptionist, and the secretary to the director of programming. In making unit determinations in cases involving nonacute health care institutions, such as the Employer, the appropriateness of the unit must be analyzed under the empirical community of interest test. *Allen Health Care Services*, 332 NLRB 1309 fn. 4 (2000); *CGE Caresystems, Inc.*, 328 NLRB 748 (1999). Under that test, the Board considers community-of-interest factors, as well as those factors considered relevant by the Board

in its rulemaking proceedings on Collective-Bargaining Units in the Health Care Industry, Second Notice of Proposed Rulemaking, 53 Fed.Reg. 33900 (1988), reprinted at 284 NLRB 1528, and Final Rule, 54 Fed.Reg. 16336 (1989), reprinted at 284 NLRB 1580 and codified at Section 103.30 of the Board's Rules. The Board further considers the evidence presented during rulemaking with respect to units in acute care hospitals, and prior cases involving either the type of unit sought or the type of health care facility in dispute. *CGE Caresystems, Inc.*, *supra*. The Board has generally found that business office clericals who handle finances and billing, deal with Medicare and Medicaid, and other reimbursement systems should be excluded from a service and maintenance unit. See e.g. *Lincoln Park Nursing Home*, 318 NLRB 1160 (1995); *CGE Caresystems, Inc.*, *supra*.

The benefits coordinator works in an office in the Employer's administrative offices which are separate from the homes and workshop where other unit employees work. Her duties are center around maintaining Employer records regarding current employees and their benefits. This includes the preparation and filing of insurance paperwork and communication with the insurance providers regarding benefits issues. Her contact with other unit employees is minimal. In view of her separate supervision, the fact that she works in a separate area with other office personnel, and her limited contact with other unit employees, I find that she does not share a sufficient community of interest and shall exclude her from the unit found appropriate here. See *Marian Manor for the Aged*, 333 NLRB 1084, 1094 (2001) (bookkeeping clerks excluded as business office clericals).

The receptionist also works at the Employer's administrative building and reports to the administrative assistant. The general duties of this position are to answer incoming phone calls, greet visitors, prepare deposits, perform secretarial duties, and handle incoming mail. Notwithstanding her separate supervision and location in the administration building, the receptionist is not isolated in a separate area of the Employer's facility and does not perform the typical business office clerical functions. Accordingly, and consistent with Board precedent, I find the receptionist is not a business office clerical and will include her in the unit. . *Lincoln Park Nursing Home*, 318 NLRB at 1164 –1165; *Charter Hospital of Orlando South*, 313 NLRB 951 (1994).

The secretary to the director of programming works in the workshop area and reports to the director of programming. She provides support services to the director of programming, including typing and filing duties directly related to the director's job duties. The record is unclear as to the extent of her contact with other unit employees. Since she has the same supervision as many of the unit employees and works in the workshop area rather than the administrative building, her community of interest with other unit employees is greater than that of the benefits clerk and receptionist. Since the record does not establish the amount of contact she has with other unit employees, I make no determination about her inclusion or exclusion from the unit and will allow her to vote in accordance with the Board's challenged ballot procedure.

IV. CONCLUSION AND FINDINGS

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁵

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time employees⁶ employed by the Employer, including aides, companions, escort drivers, group home managers, supported living home managers, alternate group home managers, lead home companions, janitorial employees, job coaches, maintenance employees, teacher assistants, receptionist, and trainers, who work at the Employer's Hope Street facility, group homes, and supported living homes.

EXCLUDED: All business office clerical employees, including the benefits clerk; confidential employees; professional employees; guards; and supervisors as defined in the Act, including the residential living coordinator and the supported living coordinators.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or

⁵ Subsequent to the close of the hearing, the parties agreed to an addendum to paragraph 6 of Board Exhibit 2. This addendum, which sets forth the specific jurisdictional information regarding the Employer, is received into evidence.

⁶ Although at hearing the parties agreed to limit the unit to full-time employees and to exclude part-time employees who regularly work less than 32 hours a week, I decline to approve that agreement and will include all regular part-time employees in the unit found appropriate here. Consistent with Board precedent, an employee will be eligible to vote in the election if the employee has worked an average of more than 4 hours per week during the calendar quarter prior to the eligibility date for the election. *Beverly Manor Nursing Home*, 310 NLRB 538 (1993). See also *V.I.P. Movers*, 232 NLRB 14 (1977).

not they wish to be represented for purposes of collective bargaining by United Steelworkers of America, AFL-CIO, CLC. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have

access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before **October 17, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (901) 544-0008 or (615) 736-7761. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential

voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **October 24, 2003**. The request may **not** be filed by facsimile.

Dated at Memphis, Tennessee, this 10th day of October 2003.

/S/

Ruth Small, Acting Regional Director
Region 26, National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627
(901) 544-0018

Classification Outline:

177-8501-4000
177-8520-0800
177-8520-1600
177-8520-2400
177-8540-8050
177-8560-1500
177-8560-9000
177-8580-8050
460-5067-4200